

A "retailer maintaining a place of business in Illinois," as defined in 86 Ill. Adm. Code 150.201(i), is required to register with the State as an Illinois Use Tax collector. See 86 Ill. Adm. Code 150.801. (This is a GIL).

November 9, 1999

Dear Mr. Xxxxx:

This letter is in response to your letter dated October 29, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

COMPANY represents a company (hereinafter 'REGISTRANT') that makes direct mail order sales to customers throughout the United States, including Illinois. REGISTRANT also intends to begin selling goods over the Internet. REGISTRANT is an existing client of COMPANY and believes that they do not have nexus in the state of Illinois. Based upon the following information, REGISTRANT is seeking an opinion as to whether they possess nexus in your state.

Information pertaining to REGISTRANT'S operations within Illinois is as follows:

- REGISTRANT is engaged in the business of selling merchandise through direct mail order sales and eventually through the Internet.
- The mailing of catalogs to customers within your state facilitates REGISTRANT'S mail order sales.
- REGISTRANT has not been contacted by your state and has never registered or collected tax within your state.
- REGISTRANT does not store inventory, occupy offices, have a server, or staff employees within your state.
- REGISTRANT is confident that they do not conduct sufficient activity within your state to establish nexus for income tax purposes.

We believe that the corporation's activities do not create sufficient nexus to collect and remit sales tax on its retail sales.

Please review the above information and advise me at your earliest convenience as to your opinion regarding the nexus of REGISTRANT for sales tax within your state.

In the context of a General Information Letter, the Department is unable to make nexus determinations because the amount of information required to make that determination is often best gathered by an auditor. The following information outlines the principles of nexus. We hope it is helpful to you in determining whether your client is responsible to pay tax in Illinois.

An "Illinois Retailer" is one who either accepts purchase orders in the State of Illinois or maintains an inventory in Illinois and fills Illinois orders from that inventory. The Illinois Retailer is then liable for Retailers' Occupation Tax on gross receipts from sales and must collect the corresponding Use Tax incurred by the purchasers. You have indicated in your letter that your client "does not store inventory, occupy offices, have a server, or staff employees within" Illinois. If your client does not accept purchase orders in Illinois or maintain an inventory in Illinois and fill Illinois orders from that inventory, your client is not an Illinois retailer.

A "retailer maintaining a place of business in Illinois," as defined in 86 Ill. Adm. Code 150.201(i), enclosed, is required to register with the State as an Illinois Use Tax collector. See 86 Ill. Adm. Code 150.801, enclosed. The retailer must collect and remit Use Tax to the State on behalf of the retailer's Illinois customers even though the retailer does not incur any Retailers' Occupation Tax liability. Determining whether a retailer is maintaining a place of business in Illinois is extremely fact specific. The Department cannot make such a complex ruling with the type of limited information that is provided in requests for General Information Letters or Private Letter Rulings.

The United States Supreme Court in Quill Corp. v. North Dakota, 112 S.Ct 1904 (1992), set forth the current guidelines for determining what nexus requirements must be met before a person is properly subject to a state's tax laws. The Supreme Court has set out a 2-prong test for nexus. The first prong is whether the Due Process Cause is satisfied. Due process will be satisfied if the person or entity purposely avails itself or himself of the benefits of an economic market in a forum state. Quill at 1910.

The second prong of the Supreme Court's nexus test requires that, if due process requirements have been satisfied, the person or entity must have physical presence in the forum state to satisfy the Commerce Clause. A physical presence is not limited to an office or other physical building. Under Illinois law, it also includes the presence of any agent or representative of the seller. The representative need not be a sales representative. Any type of physical presence in the State of Illinois, including the vendor's delivery and installation of his product on a repetitive basis, will trigger Use Tax collection responsibilities. Please refer to Brown's Furniture, Inc. v. Zehnder, (1996), 171 Ill.2d 410.

The final type of retailer is the out-of-State retailer that does not have

sufficient nexus with Illinois to be required to submit to Illinois tax laws. A retailer in this situation does not incur Retailers' Occupation Tax on sales into Illinois and is not required to collect Use Tax on behalf of its Illinois customers. However, the retailer's Illinois customers will still incur Use Tax on the purchase of the out-of-State goods and have a duty to self-assess their Use Tax liability and remit the amount directly to the State. The Use Tax rate is 6.25%.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Melanie A. Jarvis
Associate Counsel

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